

No: DC-18-10455

TINSTAR TITLE, INC. dba TinStar Litigation Support and Title	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP,	§	
Respondents	§	44 th JUDICIAL DISTRICT

PLAINTIFF'S FOURTH AMENDED ORIGINAL PETITION

TO THE COURT:

TINSTAR TITLE, INC. dba TinStar Litigation Support and Title ("TinStar") files this its Original Petition and would show the Court the following:

Discovery Control Plan

1. Plaintiff designates Level 2, TEX. R. CIV. P. ("TRCP"), Rule 190.4 for discovery in this case and affirmatively pleads that this suit is not governed by the expedited-actions process of Rule 169, TRCP.

Rule 47

2. Pursuant to Rule 47, Texas Rules of Civil Procedure ("TRCP"), Plaintiff alleges that Plaintiff seeks monetary relief over \$1,000,000.00 and demands judgment for all the other relief to which the Plaintiff deems itself entitled.

Parties

3. Plaintiff TinStar is a duly licensed corporation in the State of Texas.
4. Defendant, Linebarger, Goggan, Blair & Sampson, LLP is a Law Firm in Texas operating as a Domestic Limited Liability Partnership (LLP) with its original date of filing September 28, 2001 with a principal place of business being 2700 Via Fortuna Drive, Suite 500, Austin, Texas, 78746. Linebarger has appeared and answered and no service is necessary at this time.

Jurisdiction

5. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.
6. The Court has personal jurisdiction over both Defendant as Linebarger regularly conducts business in the State of Texas.

Venue

7. Venue is proper in Dallas County, Texas, as this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred pursuant to §15.002(a)(1), TRCP.

Conditions Precedent

8. Pursuant to Rule 54, TRCP, all conditions precedent have been performed or have occurred.

Vicarious Liability

9. At all times relevant to the events giving rise to this lawsuit, Defendant Linebarger acted through its agents and is therefore liable for such actions pursuant to vicarious liability principles. Whenever it is stated herein that the

Defendant, Linebarger, engaged in any act or omission, the statement includes the acts or omissions by Defendant, its principals, attorneys, agents, employees, representatives and others with actual or apparent authority to act on behalf of and bind the Defendant.

Facts

10. TinStar states that it has had a long-term continuing contractual arrangement with Linebarger to perform title work on behalf of Linebarger. Linebarger is an independent contractor with regard to its arrangements with Dallas County, Texas, the Dallas Independent School District and other Dallas entities, publicly representing itself to be a professional collection service managing more than \$10 billion in delinquent tax accounts receivable for its public-sector clientele.¹ Linebarger further publicly holds itself out as a representative of hundreds of local taxing jurisdictions in the collection of their delinquent property taxes.² Linebarger claims to have 46 offices in multiple states from New York, New York to Los Angeles and San Diego, California. One of their offices is in Dallas, Texas.
11. TinStar has been the entity since 2007 handling the massive volume of title work demanded by Linebarger out of its Dallas office. Procedurally, when Linebarger would file suit to collect on unpaid taxes, Linebarger had TinStar do a detailed abstract of the property to ensure that they had the correct property owner and to determine if there were lienholders who needed to be contacted

¹ See: <http://www.lgbs.com/our-services/>

² See: <http://www.lgbs.com/our-services/collections/taxes/>

prior to Linebarger instituting the foreclosure and potential sheriff's sale of the property subject to the delinquent taxes.

12. Pursuant to the various emails, texts and other documents between the parties, the terms of the contract were clear. It was as simple as Linebarger would forward the details of a delinquent property owner and TinStar would prepare the title search on the property and the property owner. When Linebarger would resolve the matter either by settlement or judgment, then Linebarger was obligated to ensure that TinStar was paid \$350.00 per property from the courts or from the owner of the property. TinStar was paid only when Linebarger collected the unpaid taxes and costs.
13. Furthermore, in accordance with the contract between Linebarger and TinStar, TinStar abstracted the titles and submitted the abstracts to Linebarger. The affidavits were prepared by Linebarger. Linebarger, as part of the ongoing contractual arrangement between the parties, always prepared the cost affidavits and TinStar returned a notarized affidavit to Linebarger. After Oct. 2015, and at the direction and advice of Linebarger, electronic signatures were included by Linebarger. In fact, an employee and agent of Linebarger, Kevin Franks, began demanding, due to the volume of work, that TinStar and Sandra Daus move more quickly in verifying the affidavits. Because of Linebarger's rush to make more money, Kevin Franks advised Sandra it was acceptable for Sandra to remotely notarize and forward the affidavits to Linebarger. In addition, Kevin Franks notified Sandra Daus that Linebarger was going to start notarizing her

affidavits not in her presence.³ All Sandra had to do was confirm her signature and Linebarger would notarize her signatures and send copies back to her for her files.⁴ Sandra Daus questioned this, but Kevin Franks advised her that what she was doing was approved by Linebarger and to keep doing it.

14. Linebarger provided advice to TinStar that TinStar could legally execute the affidavits not in the presence of a notary. On numerous occasions, Linebarger actually executed the affidavits by electronically attaching Sandra Daus' signature to the affidavits or manually stamping her name to the verification and then notarized the affidavits with Sandra Daus never having signed the affidavit nor being in the presence of a notary when the affidavits were notarized by employees of Linebarger. At least 10 different Linebarger employees were involved in this scheme which TinStar and Sandra Daus believed to be legal and proper based on the representations of Kevin Franks at Linebarger. By way of example only, Sandra Daus' signature was notarized by an employee of Linebarger not in Sandra's presence and filed of record in Suit No. TX-15-02217.⁵ This conduct was repeated hundreds of times by Linebarger and was represented to TinStar as being perfectly acceptable. Relying on these representations and actions, TinStar followed Linebarger's advice and assisted Linebarger in the remote notarization of these abstracts.

15. TinStar and Sandra Daus relied on the representations and advice of Linebarger since all of them, TinStar and Linebarger (the law firm) were partners in a partnership created by Linebarger. Plaintiff believed that it had a partnership

³ See **Exhibit 1** attached hereto.

⁴ See **Exhibit 2** attached hereto.

⁵ See **Exhibit 3** attached hereto.

with Linebarger. As early as September 13, 2011, Edward Lopez wrote to TinStar and advised Sandra Daus that he was having trouble getting her money from a sheriff's sale so he "would not allow the property to be struck off to the city" and for TinStar and Sandra Daus to "hang in there and know that I'm [Edward Lopez] protecting your interests."⁶ Notwithstanding that Edward Lopez claimed that he was protecting TinStar's interests, he falsely represented in his deposition under oath that he had no knowledge of TinStar. This conduct was consistent with the efforts of Linebarger to divert its illegal conduct to its innocent and unsuspecting partner, TinStar. In fact, when caught, Lopez's lawyer instructed Lopez to not answer the question.⁷

16. It did not matter since ultimately, as will be seen below, Lopez was forced to admit that he was aware of TinStar Title, Inc., which is particularly important in light of Linebarger falsifying its responses to discovery. In fact, in Edward Lopez's deposition the question was propounded to him that TinStar Title, Inc. and Sandra Daus were repeatedly referred to as valued partners of Linebarger and Lopez finally admitted that in at least one email, TinStar Title, Inc. was referred to as a valued partner of Linebarger.

The Nail Road 1 LP and Steven M. Strong Lawsuit

17. The program initiated and implemented by Linebarger continued from 2015 to 2017 when Linebarger sued a Limited Partnership called The Nail Road 1 LP and its principal Steven M. Strong under suit No. TX-17-00386. As was business as usual, Sandra Daus executed an affidavit for Cost of Abstract on the 11 tracts of

⁶ See **Exhibit 4** attached hereto.

⁷ Lopez Deposition at Page 47, Lines 7-15.

property owned by the Nail Road 1 LP and Steven M. Strong, a Texas attorney. At some point in the litigation, Steven M. Strong subpoenaed Sandra Daus for her deposition. Prior to her deposition, TinStar Title, Inc. waived its fee for the abstract service of \$3,850.00 at the suggestion of Edward Lopez and Linebarger. There should have been no reason for Steven Strong to take her deposition. Initially Edward Lopez told Sandra Daus that he had it handled and he had filed a Motion to Quash for Dallas County. Lopez subsequently waived the Motion to Quash and subjected Sandra Daus to her deposition without any protection. While Sandra Daus thought her partner, Edward Lopez was protecting her, he claims to have told her he was not representing her but that she had to attend the deposition. Despite the fact that he claims that he told her he was not representing her, he directly violated the Comment to the Texas Disciplinary Rules of Professional Conduct, Rule 4.03 when he failed to tell Sandra Daus that she needed to get legal counsel. It is clear that Sandra Daus misunderstood Edward Lopez's role, assuming arguendo, he had fully advised her that he was not representing her, and Lopez failed to make reasonable efforts to correct the misunderstanding. In addition, as the Comment to Rule 4.03 notes "During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person **other than the advice to obtain counsel.**" Lopez specifically testified in his deposition when asked "so the answer is no, you never told her to get a lawyer?" he answered "I feel I did -- did not say 'you need to get an attorney' because doing so requires me giving her legal advice."⁸ By his own admission, Edward Lopez violated Rule 4.03 and the Comment to Rule 4.03 and

⁸ Lopez deposition at Page 92, Lines 16-25.

subjected Sandra Daus to improper questioning in a deposition that should have never happened. In addition, Lopez never wrote Sandra Daus prior to the deposition and told her that he was not representing her in the deposition.⁹

Edward Lopez also failed to give Sandra Daus a copy of the Motion to Quash her deposition filed by Linebarger and he never disclosed to her that he had waived the Motion to Quash which stayed her deposition. Edward Lopez caused damages to Sandra Daus as a result of his violation of the Texas Disciplinary Rules of Professional Conduct. To make things worse, Sandra Daus was advised by Edward Lopez that she did not need to spend the money for an attorney since he was there. Edward Lopez also spent hours telling Sandra how to testify in her deposition, furthering the belief by Sandra Daus that Edward Lopez was, in fact, an attorney representing her in the deposition. Edward Lopez's actions as a partner of Linebarger, acting for and on behalf of the LLP, imputes liability on all partners in Linebarger with "supervision and control" over Edward Lopez as well as the partnership generally.

18. On June 16, 2017, Sandra Daus, appeared for her deposition, as required by the subpoena and the instructions of Edward Lopez. At the deposition, Sandra Daus repeatedly asked for assistance from Edward Lopez and he refused to help her, essentially abandoning her to the unfettered questions of the defense counsel. Ultimately, near the end of the deposition, Ms. Daus was asked "Who told you that that was an acceptable practice for you to apply the notarization electronically yourself? Her answer was "I was told by the lawfirm..." Question:

⁹ Lopez deposition at Page 12, Lines 10-13.

You were told by the law firm, Linebarger?" and her answer was "Yes." ¹⁰ Then, defense counsel asked her how many affidavits she did "like this" and she testified "it was over a thousand a year."¹¹

Linebarger and Lopez's Strategy to Destroy TinStar Title, Inc.

19. At this point, Edward Lopez and Linebarger realized that their tactic to streamline Linebarger making a fortune on their cases by having TinStar Title, Inc. and Sandra Daus remotely notarizing the abstracts was about to explode in their lap. While the debt to TinStar Title, Inc. was approximately \$3,000,000.00, the income that Linebarger had just put at risk was in the hundreds of millions of dollars risk because of the advice and direction that they had provided to TinStar Title, Inc. as well as Linebarger's in-house employees. At that point, Linebarger elected to engage in conduct designed to destroy TinStar Title, Inc. and conceal from John R. Ames and the Dallas County Tax Office that they may have to unwind thousands of cases should the truth come to light. Linebarger was and is terrified that if their conduct comes to light, Linebarger may lose the millions of dollars annually that it generates from the Dallas taxing entities and, perhaps even worse, have to repurchase the properties it foreclosed upon for the taxing entities, potentially costing Linebarger hundreds of millions of dollars. Linebarger needed a scape goat and TinStar Title, Inc. and Sandra Daus were their unwitting victims. Linebarger ceased providing TinStar the cost affidavits as they had done since 2007, without notice or explanation. In addition, Linebarger commenced a program slandering and freezing out TinStar Title, Inc.

¹⁰ Sandra Daus Deposition, Page 171, Lines 17-25.

¹¹ Id at Page 172, Lines 1-15.

from the funds owed to TinStar. These actions were taken to conceal Linebarger's conduct and to continue generating its massive income at the expense of TinStar Title, Inc. Now, Linebarger is interfering with TinStar's rights to being paid for work completed by zeroing TinStar's fees in Judgments entered after 11/6/2017 to present; vacating existing judgments to enter a new judgment that zeros out TinStar's fee; affixing a new Cost Affidavit to open suits executed by different abstractors, including Linebarger's employees, zeroing out TinStar's fees in dismissals, among other illegal acts. Linebarger has brought TinStar Title, Inc. to its knees and but for this litigation, would have been successful in its wrongful conduct.

20. Unbelievably, Linebarger alleges in its Plea to the Jurisdiction filed on October 29, 2018 that it cannot make a "false statement of material fact or law to a tribunal" or "offer[ing] or us[ing] evidence that the lawyer knows to be false."¹² Linebarger goes on to assert that "If information is known to be false and 'is provided by the client or another person, the lawyer **must** refuse to offer it."¹³ (emphasis in original text.). These statements are obviously false by Linebarger and are part of its scheme or artifice to defraud TinStar. If Linebarger actually believed these assertions, they would have notified the Court of the allegedly false statements by TinStar and would have reversed the judgments and refunded the money Linebarger took from the Dallas County Tax Assessor as well as bought back the property that was foreclosed upon. Linebarger did not do this and kept the money it charged for its alleged services. Worse, still,

¹² Linebarger Plea to the Jurisdiction at Page 25.

¹³ Id.

Linebarger had at least 10 members of its staff doing the very same thing, i.e., notarizing Sandra Daus's signature remotely. Well in excess of hundreds of these notarizations were performed by employees of Linebarger. Linebarger and never did anything about the in-house "remote notarizations." Apparently, Linebarger's indignation only applies when it wants to justify throwing TinStar under the bus.

The Instant Litigation

21. TinStar instituted a Rule 202, TRCP, proceeding against Linebarger in January of 2018 after their then counsel claimed he needed months to prepare for the commencement of the action. Ultimately, TinStar Title, Inc. filed the instant action to bring Linebarger to justice. Linebarger, employing various counsel, has obstructed the orderly progress of discovery and when finally ordered to respond to the discovery, falsely claimed that they had never heard of TinStar Title, Inc. and refused to answer the discovery. Linebarger went so far in answering the mandatory Requests for Disclosure to allege that "Linebarger never had any relationship, legally or factually with TinStar Title, Inc."¹⁴ This statement is blatantly false. In fact, on September 19, 2013, more than five years prior to the false representation in Linebarger's Request for Disclosure, Peggy McCormick, the Operations Manager at Linebarger emailed multiple parties advising them that "One of our abstractors -Tin Star Title (TST), is changing addresses, and I wanted to make you aware of this so you can change your records also. Please mail all abstractor fee disbursements for TST to the following address: **Tin Star**

¹⁴ Defendant's Responses to Plaintiff's Request for Disclosure dated November 16, 2018 at Page 1

Title, Inc., PO Box 181751, Arlington, Tx 76096” (emphasis supplied).¹⁵

Obviously, Linebarger saw little or no downside in trying to destroy a small Texas Corporation like TinStar Title, Inc. Perhaps, the jury will think differently.

22. Linebarger, in its continuing conspiracy to conceal its conduct and to hold on to its hundreds of millions of dollars of income, pursued its scheme to destroy TinStar Title, Inc. In responding to TinStar’s requests for production Linebarger made the following false representations to TinStar and the Court:

- a. REQUEST FOR PRODUCTION NO. 1: All documents and memoranda relating to the agreement between Linebarger and TinStar. ANSWER: Because no contract ever existed between Linebarger and TinStar, no responsive documents exist.
- b. REQUEST FOR PRODUCTION NO. 2: All documents relating or referring to TinStar’s compensation agreement relating to its work for Linebarger. Answer: Because no compensation agreement ever existed between Linebarger and TinStar and TinStar never performed “work for Linebarger”, no responsive documents exist.”¹⁶

23. As the evidence shows, Linebarger has engaged in falsification of responses to discovery in an attempt to conceal the actual relationship between Linebarger and TinStar. By way of example, Linebarger in its response to Request for Production No. 2 falsely alleged that there was no compensation agreement relating to its work for Linebarger. Linebarger attempted to rewrite the question

¹⁵ **Exhibit 5** attached hereto.

¹⁶ Defendant’s Objections and Responses to First Request for Production of Documents dated November 16, 2018 at Page 3.

in the response and then falsely claimed that TinStar never performed "work for Linebarger", claiming that no responsive documents exist. This response is patently false. As early as August 14, 2008, a decade earlier, Ed Lopez, Jr., Partner, and Peggy McCormick, Operations Manager wrote a Memorandum to Sandra Daus and TST (TinStar Title, Inc.) advising Sandra and TinStar that Linebarger was "pleased to announce that as of our August 22th [sic] filing, LGBS has increased abstract fees in our tax case filings.....We are pleased to have been able to facilitate this increase on your behalf. We appreciate your continued efforts in supplying quality abstracts."¹⁷

24. Linebarger's enumerated responses to Plaintiff's Request for Disclosure and Request for Production are false, misleading and intended to disrupt the orderly flow of discovery while continuing their efforts to destroy TinStar to preserve Linebarger's vast fortunes.
25. TinStar has calculated that the damages to TinStar are substantial, and now Linebarger is attempting to choke off the source of funding to TinStar to keep TinStar Title, Inc. from pursuing this litigation, all to TinStar's substantial damages.

Spoliation of Evidence,
Request for Evidentiary Hearing and Request for Spoliation
Instruction

26. As the evidence attached to this Amended Petition establishes, Linebarger has been and is concealing highly relevant evidence. Linebarger has engaged in the

¹⁷ See **Exhibit 6** attached hereto.

spoliation of evidence by the knowing and intentional concealment of relevant evidence. In addition to the need for sanctions for falsifying discovery responses, the intentional concealment of evidence by Linebarger is the functional equivalent of spoliation of evidence. "By 'intentional' spoliation, often referenced as 'bad faith' or 'willful' spoliation, **we mean that the party acted with the subjective purpose of concealing** or destroying discoverable evidence."¹⁸

27. Linebarger acted with the subjective purpose of concealing and possibly destroying discoverable evidence. Linebarger had a duty to preserve the evidence and such duty arose because Linebarger knew that there was a substantial chance a claim would be filed and the evidence in its possession or control would be material to that claim. Linebarger had actual knowledge that TinStar was demanding that the records be preserved. By letter dated September 29, 2017, Linebarger received a formal demand for preservation of records which included language notifying Linebarger that "certain hard copy and electronic records should be retained by LGBS in anticipation of possible litigation concerning this matter."¹⁹

28. Linebarger, by falsifying its responses to discovery, breached its duty to preserve material and relevant evidence.²⁰ Linebarger had a duty to preserve the evidence and breached that duty by concealing the evidence.

29. Plaintiff requests an evidentiary hearing on spoliation of evidence and after the court determines "that a party [here Linebarger] has spoliated evidence by

¹⁸ Brookshire Bros., Ltd. v Aldridge, 438 S.W.3rd 9, 23 (Tex. 2014).

¹⁹ See Demand for Preservation of Records on behalf of Tin Star Title, Inc. dated September 29, 2017 attached hereto as **Exhibit 7**.

²⁰ Wal-Mart Stores, Inc. v. Johnson, 106 S.W.3rd 718, 722 (Tex. 2003).

breaching its duty to preserve such evidence, it may impose an appropriate remedy. Rule 215.2 of the Texas Rules of Civil Procedure enumerates a wide array of remedies available to a trial court in addressing discovery abuse, such as an award of attorney's fees or costs to the harmed party, exclusion of evidence, striking a party's pleadings, or even dismissing a party's claims....The trial court also has discretion to craft other remedies it deems appropriate in light of the particular facts of an individual case, including the submission of a spoliation instruction to the jury."²¹

30. After due notice and evidentiary hearing, TinStar requests the appropriate Rule 215.2 TRCP sanctions, including an appropriate spoliation instruction to be given to the jury.

Linebarger's Spurious "Governmental Immunity" Defense

31. As part of Linebarger's obstruction tactics Linebarger filed its first Plea to the Jurisdiction in the Rule 202 Proceeding on June 11, 2018. On July 29, 2018 this Court entered an Order finding that the "Court has jurisdiction and therefore denied Respondent's Plea to the Jurisdiction on June 12, 2018, and hereby memorializes said verbal order herein. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent's Plea to the Jurisdiction is in all things denied." Linebarger notified the Court that it would not mandamus the Court's Order denying Linebarger's Plea to the Jurisdiction.

32. On August 8, 2018 Plaintiff filed its Plaintiff's Original Petition in Cause No. 18-10455.

33. On October 29, 2018, Linebarger files its second Plea to the Jurisdiction.

²¹ Brookshire Bros., Ltd. v. Aldridge, 438 S.W.3rd 9, 20 (Tex. 2014).

34. On November 15, 2018 TinStar filed its Response to Defendant Linebarger's

Plea to the Jurisdiction outlining in detail why Linebarger has no right to assert a defense of governmental immunity for multiple reasons, including, inter alia, that no public money is threatened by this lawsuit, Linebarger is not a 'governmental unit', and Linebarger is not performing a governmental function. Furthermore, Linebarger is not an agent of Dallas County. It is an independent contractor as is evidenced by its own contracts with Dallas County. In addition, Linebarger, through one of its capital partners, Pamela Pope Johnson, judicially confessed in testimony before this court on June 12, 2018 that the contract between Linebarger and TinStar was independent of the County of Dallas and Linebarger had the independent right to select TinStar, that TinStar did the title searches under the direction of Linebarger, did not do the title searches under the direction of a taxing entity and that Linebarger had total independent contractor status when it came to hiring or firing the people, including TinStar, who did Linebarger's title searches. The instant lawsuit threatens only Linebarger's pockets and not the pockets of any taxing entity in Dallas County.

35. **On November 21, 2018 Linebarger cancelled the hearing on its Plea to the Jurisdiction.**

36. A private entity such as Linebarger shares in the state's immunity only if the state directs and controls the complained-of-conduct. The state did not direct Linebarger to hire TinStar, nor did the State direct or control the business relationship between Linebarger and TinStar. Thus, immunity, in any form, does not protect Linebarger. Certainly, Linebarger has no entitlement, in this case, to

governmental immunity nor derivative governmental immunity. Linebarger's assertion of this defense is devoid of merit.²²

Causes of Action

37. Plaintiff incorporates in each of the following causes of action all preceding paragraphs as if all such paragraphs were incorporated in each individual cause of action verbatim.

Breach of Partnership, Breach of Fiduciary Duty and Demand for Accounting and Exemplary Damages

38. As the documents recovered by TinStar, despite being concealed by Linebarger reveal, TinStar and Linebarger entered into a continuing partnership where TinStar would provide title abstracts, a non-legal function, to Linebarger and TinStar would be paid \$350.00 per abstract provided. Linebarger and TinStar had a partnership called the Linebarger "Lawsuit Filing Program."²³ The partnership between Linebarger and TinStar was one where the parties shared in the profits and losses. When Linebarger got paid, Linebarger took its 20% of the recovery and TinStar received \$350.00 per abstract. If Linebarger did not get paid, TinStar did not get paid. At no time was there a sharing of legal fees but there was an express agreement to share profits and loss.

²² See Plaintiff TinStar's Response to Defendant Linebarger's Plea to the Jurisdiction filed on November 15, 2018 and incorporated herein as if recited verbatim.

²³ See **Exhibit 8** attached hereto.

39. The partnership between TinStar and Linebarger was and is not prohibited by the Texas Disciplinary Rules of Professional Conduct. 5.04 Professional Independence of a Lawyer provides at subsection (b) that "[a] lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law." None of the activities of the partnership between TinStar and Linebarger constituted the practice of law and so the partnership was not prohibited by the Texas Disciplinary Rules of Professional Conduct. At no time did a nonlawyer have the right to direct or control the professional judgment of a lawyer and at no time was a TinStar member a corporate director or officer of Linebarger.

40. Under both the Texas Uniform Partnership Act and the common law, partners have a duty to one another to make full disclosure of all matters affecting the partnership and to account for all partnership profits and property. "Partners owe one another a fiduciary duty, including a strict duty of good faith and candor."²⁴ A managing partner²⁵ owes his partners the highest fiduciary duty recognized in the law."²⁶

41. The actions of Linebarger breached its partnership agreement and breached its fiduciary duties to TinStar by:

- a. failing to protect Sandra Daus and represent their partner during her deposition;

²⁴ Brosseau v. Ranzau, 81 S.W.3rd 381, 394 (Tex. App.-Beaumont 2002, no writ)

²⁵ Linebarger was the managing partner of the partnership with Peggy McCormick being the "Operations Manager" of the partnership. See Exhibit

²⁶ Huffington v. Upchurch, 532 S.W.2nd 576, 579 (Tex. 1976).

- b. violating 4.03 and the Comment to 4.03 of the Texas Disciplinary Rules of Professional Conduct;
- c. providing apparently false advice to TinStar that it was certainly acceptable to use remote notarizations and demanding that TinStar employ remote notarizations;
- d. signing Sandra Daus' name to abstract affidavits and having numerous individuals at Linebarger notarize Sandra's name outside of Sandra's presence and
- e. terminating TinStar, throwing TinStar under the bus and refusing to account to or properly pay TinStar for its services;
- f. wrongfully raising governmental immunity and sovereign immunity to avoid its partnership obligations to TinStar; and
- g. **placing Linebarger's financial profitability and its relationships with Dallas County, Dallas City and Dallas ISD ("Dallas Entities") over its fiduciary obligations to its partner, TinStar.**

42. TinStar further demands a full accounting of all funds that should have been paid to TinStar and demands that if Linebarger cannot account for all of TinStar's abstract fees that Linebarger be held strictly liable to pay TinStar for such abstract fees as a result of Linebarger's conduct.

43. The dealings between Linebarger and TinStar were not fair and equitable to TinStar. Linebarger made unreasonable use of the confidence that TinStar placed in Linebarger and Linebarger failed to act in the utmost good faith and failed to exercise the most scrupulous honesty toward TinStar. Linebarger failed

to place the interests of TinStar before Linebarger's own interest and Linebarger used the advantage of its position to gain a benefit for itself to the detriment of TinStar. Linebarger failed to fully and fairly disclose all important information to TinStar concerning their relationship.

44. Accordingly, the burden of proof is on Linebarger, since Linebarger has profited or benefited from its dealings with TinStar or has placed itself in a position in which its self-interest conflicts with the interests of TinStar.

45. Linebarger's motivation to violate its duties to TinStar came as a result of its unfettered greed and as a result of its fear that Linebarger could be exposed to hundreds of millions of dollars of damages should it be required to buy back all of the properties that it illegally seized on behalf of the Dallas Entities. Linebarger intentionally set up TinStar to take the blame for its advice to employ remote notarizations. "The 'intent' issue concerning exemplary damages for breach of fiduciary duty is whether the one with a fiduciary duty intended to gain an additional unwarranted benefit."²⁷ TinStar, Linebarger's partner, relied on the advice provided to TinStar by its law firm partner. Linebarger engaged in an intentional breach of its fiduciary duty to TinStar which "is a tort for which plaintiff may recover punitive damages."²⁸ TinStar sues for punitive and/or exemplary damages in an amount not to exceed two times the amount of economic damages pursuant to § 41.008(b), Civil Practice & Remedies Code ("CPRC").

Breach of Contract

²⁷ See Cheek v. Humphreys, 800 S.W.2nd 596, 599 (Tex. App.-Houston [14th Dist.] 1990, writ denied).
²⁸ Hawthorne v. Guenther, 917 S.W.2nd 924, 936 (Tex. App.-Beaumont 1996, writ denied)

46. Linebarger breached its contract with TinStar by failing to perform under the continuing contract between TinStar and Linebarger.
47. As a result of such breach, Linebarger is liable for all actual and consequential damages arising from such breach as well as reasonable and necessary attorney's fees.

**Tortious Interference with Contractual Rights
and Prospective Contractual Rights**

48. Linebarger by its actions as alleged above has tortuously interfered with TinStar's contractual and prospective contractual rights. "Texas law protects existing as well as prospective contracts from interference".²⁹ In falsely accusing TinStar of illegal conduct and in interfering with TinStar's right to collect its fees for each abstract performed by TinStar, Linebarger has caused TinStar to suffer actual damages of in excess of \$2,800,000.00 as well as consequential damages as a result of Linebarger's improper conduct. TinStar also sues for punitive and/or exemplary damages in an amount not to exceed two times the amount of economic damages pursuant to § 41.008(b), Civil Practice & Remedies Code ("CPRC").

Breach of Express Warranty

49. Linebarger expressly warranted that TinStar would receive \$350 for each abstract performed by TinStar. Linebarger has breached this express warranty by interfering with TinStar's right to collect as well as simply refusing to pay TinStar.

²⁹ Sterner v. Marathon Oil Co., 767 S.W.2nd 686, 688 (Tex. 1989)

Fraud

50. The actions of Linebarger defrauded TinStar. TinStar sues for all actual and exemplary damages as a result of the fraud perpetrated on it by Linebarger.

Quantum Meruit

51. In the alternative, TinStar sues under the equitable remedy of Quantum Meruit. Valuable services were rendered to Linebarger, the person sought to be charged by TinStar. The services and materials were accepted by Linebarger and used and enjoyed by Linebarger. These services and materials were enjoyed and used by Linebarger under such circumstances as reasonably notified Linebarger that TinStar in performing such services was expecting to be paid by Linebarger either directly or indirectly.

Attorney's Fees

52. TinStar was forced to hire Michael Pezzulli, an attorney licensed and in good standing with the Texas Supreme Court and State Bar of Texas. TinStar sues for its reasonable and necessary attorney's fees.

Motion for Net Worth Discovery

53. Plaintiff, TinStar, files this Motion for Discovery of Net Worth Evidence Pursuant to § 41.0115, CPRC, and requests that this Court authorize discovery of evidence of Defendant, Linebarger's net worth pursuant to § 41.0115, CPRC and would respectfully show the following:

- a. This lawsuit was filed by Plaintiff, TinStar Title, Inc. on August 8, 2018. This lawsuit arises out of the relationship between Plaintiff and Defendant and seeks exemplary damages against Linebarger for breach of fiduciary

duties and fraud, among other counts. Linebarger's net worth is relevant to Plaintiff's claims for exemplary damages.

- b. Plaintiff has a substantial likelihood of success on the merits of its claim for exemplary damages because the conduct described above shows willful and malicious conduct by Linebarger to harm Plaintiff for Linebarger's personal gain.
- c. Plaintiff requests the following discovery to determine Defendant's net worth:
 - i. All of Linebarger's Income Statements and all other financial statements for each quarter from January 1, 2017 to the present;
 - ii. Balance Sheet for Linebarger for its fiscal/calendar year ending 2017 and 2018;
 - iii. General Ledger for Linebarger's fiscal/calendar year ending 2017 and 2018.
 - iv. Listing of all accounts receivable from January 1, 2017 to the present;
 - v. Any and all bank and/or brokerage account statements from January 1, 2017 to the present for Linebarger.

54. TinStar respectfully requests that this Court conduct a hearing and grant TinStar's Motion for Discovery of Net Worth Evidence pursuant to § 41.0115, CPRC, and grant any other relief to which Plaintiff, TinStar, may show itself to be justly entitled.

Damages

55. TinStar's damages arise from different conduct of Linebarger:

- a. Linebarger shorted payment to TinStar by not collecting the full abstracting fee due to TinStar. TinStar has been damages under this category in the amount of \$42,022.07.
- b. TinStar has been damaged by the non-payment of open suits because of Linebarger in the amount of \$14,700.00.

- c. TinStar has been damaged by Linebarger non-suiting cases thereby depriving TinStar of income in the amount of \$891,150.00.
- d. TinStar has been damaged by Linebarger's unpaid judgments in the amount of \$910,350.00.
- e. TinStar has been damaged by Linebarger zeroing judgments in the amount of \$184,800.00.
- f. TinStar has been damaged by Linebarger failing to distribute collected abstract fees to TinStar thereby damaging TinStar in the amount of \$333,550.00.
- g. TinStar has been damaged by the unilateral dismissal of suits by Linebarger in the amount of \$175,450.00.
- h. TinStar has been damaged by Linebarger simply taking TinStar's work and turning it over to a third party for payment in the amount of \$66,150.00.
- i. TinStar has been damaged by Linebarger failing to pay TinStar in the "Bailey Suit." To the extent that Linebarger breached its agreement, TinStar is now owed \$101,500.00.

Prayer for Relief

56. Plaintiff, TinStar asks the Court to:

- a. enter judgment against Linebarger for all actual, compensatory, direct and incidental, and consequential damages;

- b. enter judgment against Linebarger for all exemplary and/or punitive damages;
- c. award TinStar attorney's fees and costs against Linebarger;
- d. award TinStar taxable costs;
- e. award TinStar prejudgment and post judgment interest at the highest lawful rate;
- f. award TinStar such other and further relief to which it is justly entitled in law or equity.

57. Under Rule 216, TRCP, TinStar requests a trial by jury on all issues so triable.

A written request has been filed with the clerk of the court a reasonable time before the date set for the trial of the cause and the jury fee has been paid to the clerk of the court.

Respectfully submitted,

**LAW OFFICE OF MICHAEL F. PEZZULLI,
P.L.L.C.**

/s/ Michael F. Pezzulli

Michael F. Pezzulli

State Bar No. 15881900

880 Country Club Road

Fairview, Texas 75069

(972) 713-1300

michael@courtroom.com

www.courtroom.com

Counsel for the Plaintiff

CERTIFICATE OF SERVICE

This is to certify that the above Plaintiff's Fourth Amended Original Petition was served on the below counsel via email and/or e-service on this the 26th day of February 2019.

Andrew M. Howard
5220 Spring Valley Road,
Suite 530
Dallas, Texas 75254
amh@andrewmhoward.com

/s/ Michael Pezzulli

EXHIBIT 1

AT&T LTE

12:23 PM

65%



Kevin

May 20, 2016, 1:55 PM

Hi Sandra,

You should have the affidavits
now. Thanks again.

Kevin

Ok can they be notarized there? I
can sign and scan back but not
at home to use electronic
stamps.

Your signature should be on
them already; if you would
confirm them then we can
notarize them & send copies
back for your records.

Kevin

Had them checked and we are
good to go! Thank you! I could
do it after day job but that will be



Bumberg 100-5102

EXHIBIT

1

EXHIBIT 2

AT&T LTE

12:24 PM

65%



KF



Kevin

Jul 12, 2016, 2:11 PM

Hi Sandra, Have you had a chance to review the affidavit for TX-15-02217 that we need to file today? Would you please send it back if you have? Thank you very much. Kevin

Hi Kevin, I will send it to you tonight. Sorry about that.

Sandra,

We went ahead and notarized it because it was to be filed today. I've emailed you a copy for your records. Thanks anyway and it's okay.

Kevin

had

Jul 28, 2016, 11:36 AM



Blumberg No. 5172

EXHIBIT

2

EXHIBIT 3

SUIT NO. TX-15-02217

DALLAS COUNTY, ET AL

VS.

MARILYN WALTON, ET AL

§
§
§
§
§

IN THE DISTRICT COURT

44TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FIRST AMENDED AFFIDAVIT FOR COST OF ABSTRACT

BEFORE ME, the undersigned authority, a notary public in and for Dallas County, Texas personally appeared **Sandra Daus** of **Tin Star Litigation Support & Title ("TST")** and affiant, known by me to be the person making this Affidavit, and thereby qualified in all respects to make this Affidavit, who was first by me duly sworn and who did then under oath state and certify:

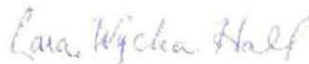
I, **Sandra Daus** am over the age of 18 years. I have never been convicted of a felony. I am fully competent to make this Affidavit. I am able to swear, as I do hereby swear that all statements made herein are true and correct and based on personal knowledge of each of the facts set forth herein.

TST has contracted with the law firm of Linebarger Goggan Blair & Sampson, LLP, attorneys of record for the Plaintiff(s), to provide the name, identity and location of the necessary parties and in procuring the necessary legal description(s) of the property(s) made the subject of the above numbered and entitled lawsuit. TST reviewed and examined the Dallas County Deed Records and various other sources to provide the requested information. The fee for said service is **\$700.00**. I am familiar with the rates and charges for title abstracts in and around the Dallas County area. The fee charged for the above described services is reasonable."



Sandra Daus - Affiant

Given under my hand and seal of office on the 12th day of July, 2016.



Notary Public in and for the State of Texas



EXHIBIT 4

From: Edward Lopez <EdwardL@lgsb.com>
Date: Tue, Sep 13, 2011 at 6:24 PM
Subject: Re: Grand prairie suit
To: Tin Star <tinstartitle@gmail.com>
Cc: Peggy McCormick <PeggyM@lgsb.com>

Sandra,

I was hoping that I would be conveying the message that the properties went to sheriff's sale and sold as planned. Unfortunately, that did not happen. Much to my chagrin the developer chose not to bid even though they were insistent that the property make the sheriffs sale in September.

Because you have so much time invested into the case, and because the recovery of your fees (and the ad litem's) are of paramount importance to me, I would not allow the property to be struck off to the City. The City manager and city attorney agreed that they would not create an avenue for the developer to get a better "deal."

All this means is that the developer has to buy the properties to complete their anticipated project. So I anticipate reposting this very soon.

Additionally, I'm going to do what I can to market this property to other prospective purchasers so we can move it through the remaining steps in the process.

While not all good news, as Peggy mentioned, there is good news in between. So hang in there and know that I'm protecting your interests.

Ed

Sent from my iPhone

On Sep 13, 2011, at 4:03 PM, "Tin Star" <tinstartitle@gmail.com> wrote:

> Ed if you can let me know what a good time for you is, then I can make time to call in. I can call during the day or I get out of the day job at 3:45 on most days (we all know those days don't we? Haha)

>

> Thank you the quick response Peggy!

>

> Sandra Daus

>

> Sent from my iPhone

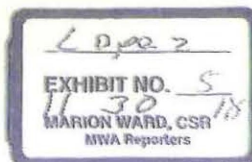
>

> On Sep 13, 2011, at 2:48 PM, Peggy McCormick <PeggyM@lgsb.com> wrote:

>

>> Hi Sandra,

>> Ed & I were just talking about this case last week. He & I need to call you together, and I'm not sure when he will be in the office. Ed, is there a time that is good for you this week, and Sandra is there a good time for us to be able to call you?



>>

>> It is a good story, but it's Ed's story, so I want him to share it with us both.

>> Thanks & have a great day!

>>

>> Peggy

>>

>> Peggy McCormick

>> Operations Manager - Dallas Office

>> Linebarger Goggan Blair & Sampson, LLP

>> (469) 221-5060 / Fax (214) 754-7167

>> peggym@publicans.com

>>

>> -----Original Message-----

>> From: Tin Star [<mailto:tinstartitle@gmail.com>]

>> Sent: Tuesday, September 13, 2011 2:39 PM

>> To: Edward Lopez; Peggy McCormick

>> Subject: Grand prairie suit

>>

>> Hello,

>>

>> Can you please advise as to what the status of this case is now? From the looks of it, it appears that it did not sale as expected last Tuesday. What state is it in now?

>>

>> Thank you,

>>

>> Sandra Daus

>>

>> Sent from my iphone

>> CONFIDENTIALITY STATEMENT

>> This transmission may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete the message. Unauthorized interception of this e-mail is a violation of federal criminal law.

CONFIDENTIALITY STATEMENT

This transmission may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete the message. Unauthorized interception of this e-mail is a violation of federal criminal law.

EXHIBIT 5

From: Peggy McCormick <PeggyM@lgbs.com>
Date: Thu, Sep 19, 2013 at 5:54 PM
Subject: Change of Address for Tin Star Title
To: "George Vent jr (George.Ventjr@dallascounty.org)" <George.Ventjr@dallascounty.org>
Cc: Tin Star <tinstartitle@gmail.com>, Heather Mueller <Heather.Mueller@lgbs.com>

Mr. Vent,

One of our abstractors – Tin Star Title (TST), is changing addresses, and I wanted to make you aware of this, so that you can change your records also.

Please mail all abstractor fee disbursements for TST to the following address:

Tin Star Title, Inc.

P O Box 181751

Arlington, TX 76096

If you need any additional information, please call me at 469.221.5060 or e-mail peggym@lgbs.com

Thanks so much for all of your help.

Peggy McCormick
Operations Manager
Linebarger Goggan Blair & Sampson, LLP
Attorneys at Law
PeggyM@lgbs.com
2323 Bryan Street, Ste 1600
Dallas, TX 75201
Main: (214) 880-0089
Direct: (469) 221-5060
Fax: (214) 754-7167
<http://www.lgbs.com>

CONFIDENTIALITY STATEMENT

This transmission may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete the message. Unauthorized interception of this e-mail is a violation of federal criminal law.

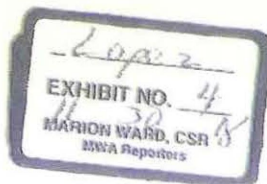


EXHIBIT 6

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

ATTORNEYS AT LAW
UNIVISION CENTER
SUITE 1800
2325 DRYAN STREET
DALLAS, TEXAS 75201

(214) 880-0000
(800) 441-0950
FAX (214) 754-7167

August 14, 2008

MEMORANDUM

TO: Nahum Razo & Sandra Daus, TST
RJ Lorenz, NTRG
Steve Russell, LHS

FROM: Edward Lopez, Jr., Partner
Peggy McCormick, Operations Manager

RE: Abstractor Fees

We are pleased to announce that as of our August 22nd filing, LGBS has increased abstract fees in our tax case filings. In light of current market conditions and industry standards within Dallas County, we do not anticipate any problems in having the new amount approved as "fair and reasonable".

The new fee for the cost of abstract on each property will be \$350.00. August 22nd will be our first filing for this season and so all abstracts that are included in this filing will reflect the new fee.

We are pleased to have been able to facilitate this increase on your behalf. We appreciate your continued efforts in supplying quality abstracts.

Austin • Beaumont • Brownsville • Chicago (IL) • Corpus • Corpus Christi • Denton • Dallas
Edinburg • El Paso • Fort Worth • Hamburg (TX) • Houston • Jacksonville (FL) • Longview • Los Angeles (CA) • Lubbock • New Orleans (LA)
Odessa • Columbus (OH) • Philadelphia (PA) • San Angelo • San Antonio • The Woodlands • Tyler • Victoria • Waco

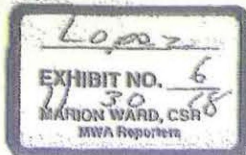


EXHIBIT 7

880 COUNTRY CLUB ROAD | FAIRVIEW, TEXAS 75069

MICHAEL F. PEZZULLI | P 972-713-1300 | C 469-223-1000 | E MICHAEL@COURTROOM.COM

September 29, 2017

Ms. Pamela Pope Johnson
2777 N. Stemmons Freeway
Suite 1000
Dallas, Texas 75207
Via email: PamJ@lqbs.com

Mr. Edward Lopez, Jr.
277 N. Stemmons Freeway
Suite 1000
Dallas, Texas 75207
Via email: EdwardL@lqbs.com

Mr. Rick Haass
711 Navarro Street
Suite 300
San Antonio, Texas 78205
Via email: haass@att.net



Re: Demand for Preservation on behalf of Tin Star Title, Inc.
d/b/a Tin Star Title & Litigation Support

Dear Ms. Johnson and Messrs. Lopez and Haass:

Please be advised that I have been retained to represent Tin Star Title, Inc. d/b/a Tin Star Title & Litigation Support ("Tin Star") with respect to work performed by Tin Star on behalf of the Dallas office of Linebarger Goggan Blair & Sampson, LLP ("LGBS"). My client, for years, has been performing abstract services for LGBS and has accrued a significant accounts payable currently due and owing by LGBS. Pursuant to our investigation into this matter, certain hard copy and electronic records should be retained by LGBS in anticipation of possible litigation concerning this matter.

Demand for Preservation of Electronically Stored Information

Tin Star demands that you preserve all documents, tangible things and electronically stored information potentially relevant to the issues in this cause. As used

in this document, "you" and "your" refers to LGBS, and its predecessors, successors, parents, subsidiaries, divisions or affiliates, and their respective officers, directors, agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions.

You should anticipate that much of the information subject to disclosure or responsive to discovery in this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones). Of particular interest is all of the information stored on your **FTP Systems** and your **Oracle Systems**.

Electronically stored information (hereinafter "ESI") should be afforded the broadest possible definition and includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically or optically stored as:

- Digital communications (e.g., e-mail, voice mail, instant messaging);
- Word processed documents (e.g., Word or WordPerfect documents and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data files);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, Yahoo, blog tools);
- Online Access Data (e.g., Temporary Internet files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations);
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and,
- Back Up and Archival Files (e.g., Zip, .GHO).

ESI resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to you, but also in areas you may deem *not* reasonable accessible. You are obliged to preserve potentially relevant evidence from *both* these sources of ESI, even if you do not anticipate producing such ESI.

The demand that you preserve both accessible and inaccessible ESI is reasonable and necessary. Pursuant to the Federal Rules of Civil Procedure, you must identify all sources of ESI you decline to produce and demonstrate to the Court why such sources are not reasonably accessible. For good cause shown, the court may then order production of the ESI, even if it finds that it is not reasonably accessible. In addition, pursuant to Texas Rules of Civil Procedure, Rule 196.4 (Electronic or Magnetic Data), you must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in the ordinary course of business. If you believe that the data is not accessible through reasonable efforts, the Court can still order you to comply

with the request. Accordingly, even ESI that you deem reasonably inaccessible must be preserved in the interim so as to not deprive Tin Star of its right to secure the evidence or the Court of its right to adjudicate the issue.

Preservation Requires Immediate Intervention

You must act immediately to preserve potentially relevant ESI including, without limitation, information with the *earlier* of a Created or Last Modified date on or after 2011 through the date of this demand and concerning the claim of Tin Star that you have refused to pay for abstract services performed on behalf of LGBS as well as any ESI you may use to support your claims or defenses in this case.

Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to the protection of ESI. Be advised that sources of ESI are altered and erased by continued use of your computers and other devices. Booting a drive, examining its contents or running any application will irretrievably alter the evidence it contains and may constitute unlawful spoliation of evidence. Consequently, alteration and erasure may result from your failure to act diligently and responsibly to prevent loss or corruption of ESI.

Nothing in this demand for preservation of ESI should be understood to diminish your concurrent obligation to preserve document, tangible things and other potentially relevant evidence.

Suspension of Routine Destruction

You are directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using date or media wiping, disposal, or erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning, re-imaging or disposing of systems, servers, devices or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and
- Executing drive or file defragmentation or compression programs.

Guard Against Deletion

You should anticipate that your employees, officers or others may seek to hide, destroy or later ESI and act to prevent or guard against such actions. Especially where company machines have been used for Internet access or personal communications, you should anticipate that users may seek to delete or destroy information they regard as personal, confidential or embarrassing and, in so doing, may also delete or destroy potentially relevant ESI. This concern is not one unique to you or your employees and officers. It is simply an event that occurs with such regularity in electronic discovery efforts that any custodian of ESI and their counsel are obligated to anticipate and guard against its occurrence.

Preservation by Imaging

You should take affirmative steps to prevent anyone with access to your data, systems and archives from seeking to modify, destroy or hide electronic evidence on network or local hard drives (such as deleting or overwriting files, using data shredding and overwriting applications, defragmentation, re-imaging or replacing drives, encryption, compression, steganography or the like). With respect to local hard drives, one way to protect existing data on local hard drives is by the creation and authentication of a forensically qualified image of all sectors of the drive. Such a forensically qualified duplicate may also be called a bitstream image or clone of the drive. Be advised that a conventional back up of a hard drive is not a forensically qualified image because it only captures active, unlocked data files and fails to preserve forensically significant data that may exist in such areas as unallocated space, slack space and the swap file.

With respect to the hard drives and storage devices of each of the persons named below and of each person acting in the capacity or holding the job title named below, as well as each other person likely to have information pertaining to the instant action on their computer hard drive(s), demand is made that you immediately obtain, authenticate and preserve forensically qualified images of the hard drives in any computer system (including portable and home computers) used by that person during the period from January 2012 to the present, as well as recording and preserving the system time and date of each such computer.

- Kevin Franks,
- Pam Johnson;
- Rosalind Coston;
- Ruth Green; and
- Peggy McCormick

Once obtained, each such forensically qualified image should be labeled to identify the date of acquisition, the person or entity acquiring the image and the system and medium from which it was obtained. Each such image should be preserved without alteration.

Preservation in Native Form

You should anticipate that certain ESI, including but not limited to spreadsheets and databases, will be sought in the form or forms in which it is ordinarily maintained. Accordingly, you should preserve ESI in such native forms, and you should not select methods to preserve ESI that remove or degrade the ability to search your ESI by electronic means or make it difficult or burdensome to access or use the information effectively should this matter go to litigation.

Metadata

You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files but which may not be apparent to a user, including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. Be advised that metadata may be overwritten or corrupted by careless handling or improper steps to preserve ESI. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields.

Servers

With respect to servers like those used to manage electronic mail (e.g. Microsoft Exchange, Lotus Domino) or network storage (often called a user's "network share"), the complete contents of each user's network share and e-mail account should be preserved. There are several ways to preserve the contents of a server depending upon, e.g., its RAID configuration and whether it can be downed or must be online 24/7. If you question whether the preservation method you pursue is one that we will accept as sufficient, please call to discuss it.

Home Systems, Laptops, Online Accounts and Other ESI Venues

Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems may contain potentially relevant data. To the extent that officers, partners, board members or employees have sent or received potentially relevant e-mails or created or reviewed potentially documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R disks and the user's PDA, smart phone, voice mailbox or other forms of ESI storage.). Similarly, if employees, officers, partners or board members used online or browser-based email accounts or services (such as AOL, Gmail, Yahoo Mail or the like) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

Ancillary Preservation

You must preserve documents and other tangible items that may be required to access, interpret or search potentially relevant ESI, including logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction sheets, data entry forms, abbreviation keys, user ID and password rosters or the like.

You must preserve any passwords, keys or other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals and license keys for applications to access the ESI.

You must preserve any cabling, drivers and hardware, other than a standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip Drives, Jump drives and other legacy or proprietary devices.

Paper Preservation of ESI is Inadequate

As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

Agents, attorneys and Third Parties

Your preservation obligation extends beyond ESI in your care, possession or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you must notify any current or former agent, attorney, employee, custodian or contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you must take reasonable steps to secure their compliance.

Preservation Protocols

We are willing to work with you to agree upon an acceptable protocol for forensically sound preservation and this is particularly true if your ESI incorporates Cloud Computing Architecture and Deployment.

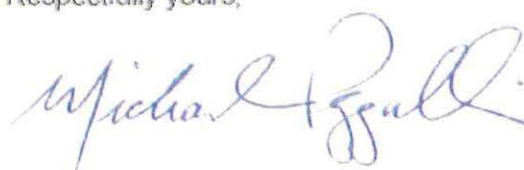
Do Not Delay Preservation

I am available to discuss reasonable preservation steps; however, you should not defer preservation steps pending such discussions if ESI may be lost or corrupted as a consequence of delay. Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay in production of evidence to which we are entitled, such failure would constitute spoliation of evidence, and we will not hesitate to seek the appropriate sanctions.

Confirmation Compliance

Please confirm by Monday, October 9, 2017 that you have taken the steps outlined in this letter to preserve ESI and tangible documents potentially relevant to this action. If you have not taken the steps outlined above, or have taken other actions, please describe what you have done to preserve potentially relevant evidence.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Michael Pezzulli". The signature is fluid and cursive, with the first name "Michael" and the last name "Pezzulli" clearly distinguishable.

Michael Pezzulli

EXHIBIT 8

From: Peggy McCormick
Sent: Saturday, May 04, 2013 10:18 AM
To: instaritle@gmail.com; Becky Marx (ruizresearch@sbcglobal.net); Charles Allen
Cc: Edward Lopez; Bridget Lopez; Pam Johnson; Jonathan Martz
Subject: LGB&S Abstractor Meeting 5/28/13 at 4 pm

All,

It is time to have a face to face meeting with our valued partners in our Lawsuit Filing Program -- our Abstractors!

We would like for you to come to our offices downtown on Tuesday, May 28th for a 4 pm meeting. I will be sending a meeting invitation to everyone on this e-mail. We will make every effort for this to be an efficient meeting, but we do have a lot of information to pass along to you, and would like to have everyone attend this meeting.

You are welcome to come to our offices earlier if you have specific questions about TLO, required documents or would like to meet with Jon Martz or any of our staff to answer questions. Please just let me know so that I can make arrangements.

We are asking that anyone works with you gathering data or doing the abstracts, also attend this meeting if possible. One of the main topics that our attorneys want to review with you, is the review of any checks and balances processes that both LGB&S and your staff might have in place before the abstracts finally get to attorney review (3 days before filing).

Topics to be covered include:

- > A review of the summer filing schedule and the proposed work plan for the remainder of the year.
- > Updates on the e-filing system that will be implemented for Dallas/Collin/Tarrant and Denton effective 1-1-2014
- > Updates on any District Clerk or Court process changes -- including information available on ROAM or Odyssey
- > Specific abstract issues that our attorneys have encountered during the past year
- > Questions that you might have for our attorneys or for LGB&S about research, system access, or required documentation

Our attorneys who head up our Litigation Program in both Dallas and Collin counties will be available to answer questions and provide information to you in this meeting.

We appreciate our partnership with you! We file thousands of lawsuits each year on behalf of our clients, and we couldn't do it without your efforts, and we look forward to seeing you on Tuesday, May 28th!

Peggy McCormick
Operations Manager
Linebarger Goggan Blair & Sampson, LLP
Attorneys at Law
PeggyM@gbs.com
2323 Bryan Street, Ste 1600
Dallas, TX 75201
Main: (214) 880-0089
Direct: (469) 221-5060
Fax: (214) 754-7167
<http://www.lgbs.com/>



Possible dates for Abstractor Meeting

1 message

Peggy McCormick <PeggyM@lgbs.com>

Wed, Feb 11, 2015 at 9:21 AM

To: "Tinstar Title Owners (tinstartitle@gmail.com)" <tinstartitle@gmail.com>

Cc: Rosalind Coston <Rosalind.Coston@lgbs.com>

Good morning Sandra,

Our attorney and lawsuit production team have asked me to schedule a time to meet with you. As you remember, we try to have an annual meeting to discuss goals, give feedback, talk about any new procedures and make sure everyone is aware of all of the issues coming up. The last meeting we had was May 13, 2013, so we missed last year due to the move, and of course the new procedures for e-filing.

I'd like you to check these dates and let me know if one of them will work for you – the only thing that our new Managing Partner, Bridget Lopez has requested, is to begin the meeting at 2 pm – she has commitments in the evening.

The possible dates are:

Monday, Feb 23rd

Thurs, Feb 26th

Mon, Mar 2nd

Wed, Mar 4th

Please let me know if any of these dates work for you, preferably any of the last 3, since one of our team may have to change a drs appt on the 23rd.

We will prepare an agenda and make sure everyone has plenty of time to gather anything they will need.

Thanks Sandra – we so appreciate the partnership that we have together, and want to make sure that it continues in the best way for both of our firms.

Please let me know & I will send out a meeting invite to everyone.

Thanks,

Peggy McCormick
Operations Manager
Linebarger Goggan Blair & Sampson, LLP
Attorneys at Law
PeggyM@lgbs.com
2777 N. Stemmons Freeway, Suite 1000
Dallas, TX 75207
Main: (214) 880-0089
Direct: (469) 221-5060
Fax: (214) 754-7167
<http://www.lgbs.com/>

CONFIDENTIALITY STATEMENT

This transmission may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential. If